

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DEBORAH BAXTER
Claimant

APPEAL NO: 15A-UI-14231-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RECOVERY ROOM
Employer

OC: 11/22/15
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 18, 2015, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on January 20, 2016. The claimant participated in the hearing. Sharon Stout, Owner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time server/bartender for Recovery Room from May 2, 2010 to October 22, 2015. She voluntarily resigned after the employer publicly reprimanded her again October 1, 2015.

The claimant submitted her two-week notice by text message October 1, 2015, following an incident that occurred at work that day. The claimant's shift was over and she was doing side work. She was cleaning the mustard and ketchup bottle lids by soaking them in hot water and then drying them without rinsing the dirty water off of them. The employer, who was in the bar drinking, observed the claimant fail to rinse the lids to the ketchup bottles after removing them from the dirty water. The employer loudly said, "Deb. What are you doing?" It was lunchtime and there were many regulars at the bar in the bar/restaurant. The claimant was very embarrassed in front of the regulars. The employer could tell by the claimant's face that her comment was hurtful and embarrassing and she put her hand over her mouth and apologized to the claimant and customers. The employer acknowledged she often consumes alcohol while at work or there as a customer and that she can be abrupt with people. She stated her husband is much better at dealing with people and issues that arise in the establishment. Later that day the claimant texted the employer her two-week notice and the employer asked her to stay another week because the employer had recently had knee surgery. The claimant agreed to stay so her last day of work was October 22, 2015.

The employer had often embarrassed the claimant in front of regulars when she was drinking and the claimant testified the employer's drinking had increased over the last two and one-half to three years. The only other specific incident the claimant could cite occurred in the summer of 2015 when the claimant was writing the special of chicken salad and the price on the board and the employer yelled at her saying she listed the wrong price when actually she had the correct price.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer.

Iowa Code § 96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (4) The claimant left due to intolerable or detrimental working conditions.

The law presumes a claimant has left employment with good cause when she quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that she intends to quit employment unless her concerns are addressed. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-Vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The claimant decided to resign her position October 1, 2015, after the employer, who had been drinking, yelled at her in front of the regular customers. Employees should not be required to endure public reprimands from any member of management. Nor should employees have to deal with an employer who consumes alcohol during work or instructs or reprimands them when she is intoxicated. The claimant quit due to the conditions created by the employer. Under these circumstances, the administrative law judge concludes the claimant has established her leaving was for good cause attributable to the employer. Therefore, benefits are allowed.

DECISION:

The representative's decision dated December 18, 2015, reference 01, is reversed. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css